

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6773 OF 2006

Mr.Arun Dattatraya Kakade .. Petitioner.

V/s.

Kunabi Shikshan Prasarak
Sanstha Khed & Ors. .. Respondents.

Mr.Dilip Bodake for the Petitioner.

Mr.A.P.Rege for the Respondent Nos. 1 and 2.

Mrs.J.S.Pawar, AGP for the Respondent Nos. 3 and 4.

**CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.**

DATED : 22nd MARCH, 2007.

P.C.:

. Rule. Heard forthwith.

2. The petitioner was appointed on a regular vacancy vide appointment order dated 24.12.2000, Exh.'A'. On completion of his probation period, the petitioner is deemed to have completed probation.

3. It appears that on 05.09.2006, a student of the school where the petitioner was working, had committed

suicide by jumping in the Chordai river. The alleged ground of suicide, according to the police authorities and the parents of the deceased student, was that the petitioner had given less marks to the student in Hindi. Based on the FIR, the petitioner was arrested on 06.09.2006. He was granted bail on 15.09.2006.

4. Considering the provisions of the Rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, on a teacher being arrested and if the arrest is continued for more than 48 hours, he would be deemed to be suspended. However, that suspension would continue for the period of detention. After that period, it is still open to the Management to suspend a teacher provided the Management proposes to conduct a departmental enquiry in the matter.

5. In the instant case, the Management continued the suspension of the petitioner by the order dated 18.09.2006. Till date, however, no charge-sheet has been served on the petitioner. The purport of an order of suspension is that, there are serious charges of misconduct against the petitioner and in the circumstances, the presence of the suspended teacher on the premises is not desirable, considering the nature of the misconduct and or that such a suspended employee

would interfere with the witnesses to be examined in the departmental proceedings.

6. In any case, even after long passage of time, there has been no charge-sheet served on the petitioner. The mere fact that FIR was lodged by itself cannot be a basis for continuing the suspension. If the charge was grave, involving moral turpitude, the action of the respondent management to suspend the petitioner could have been considered. This is not so in the instant case. The learned counsel for the petitioner drew our attention to the judgment of this court in the case of Subhag S.Kavi vs. State of Maharashtra, reported in 2006(5) Mh.L.J. 618, to which one of us (Rebello, J.) was a party. Some earlier judgments on the point of suspension have been considered and the law has been set out therein.

7. Considering the above, the continued suspension of the petitioner is without authority of law and consequentially, the order of suspension dated 08.09.2006 is hereby set aside.

8. We direct the respondents Management to take back the petitioner in service forthwith. Considering that the order of suspension is quashed and set aside.

Needless to say that the petitioner would be entitled to wages for the period of his suspension less the suspension allowance already paid. This exercise is to be completed within six months from today.

9. Rule is made absolute accordingly with no order as to costs.

(F.I.REBELLO, J.)

(R.M.SAVANT, J.)

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